IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 788 OF 2007
IN
CRIMINAL APPEAL NO. 639 OF 2007

Tarik Abdul Karim Parveen @ Tarik Parveen ..Applicant (Org.Accd.No.9)

Vs.

The State of Maharashtra ..Respondent

Mr. Niteen V. Pradhan with Mr. Dhiraj Mirajkar, Ms. S.D. Khot, Ms. Ameeta Kuttikrishnan for applicant.
Mr. A.S. Gadkari, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 07, 2007.

P.C.:

1. Heard Mr. Pradhan the learned counsel for the applicant and Mr. Gadkari, the learned APP for the State.

2. The applicant-original accused no.9 has been convicted by the Special Court under the M.C.O.C. Act, 1999 for the offences punishable under Section 3(2) of the said Act read with Section 120-B read with Section 34 of IPC as well as under Section 3(1)(ii) of the M.C.O.C. Act, 1999 and has been sentenced to suffer RI for five years and to pay a fine of Rs.5

lacs in default therein to suffer further RI for six months. He has also been convicted for the offences punishable under Section 387 read with Section 34 of IPC and sentenced to suffer RI for two years and to pay a fine of Rs.5000/- in default to suffer further RI for three months. All the substantive sentences have been ordered to run concurrently as per the Judgment and Order dated 13/6/2007 passed by the Special Court in MCOC Special Case No. 3 of 2003.

3. Though the appeal has been admitted, it is likely to take some time for being listed for final hearing and, therefore, this application for being released on bail, solely on the ground that the applicant has been in jail from 20/7/2004 and thus has undergone sentence of more than three years out of the maximum sentence of five years. It is also admitted that the applicant has not remitted fine amount and it is stated that his financial conditions do not permit him to deposit such a high amount.

4. Mr. Gadkari, the learned APP has placed on record the affidavit in reply of Shri Ashok Tukaram Duraphe, Assistant Commissioner of Police, D-1/South,

Detection Crime Branch, CID, Mumbai and the application for bail has been opposed mainly on two grounds, namely, (a) pendency of the criminal cases against the applicant and (b) the eminent possibility of his involvement, if released on bail, in serious organised crimes and other related offences as well as fleeing away from the country. In the said affidavit it has been pointed out that in all five cases in different courts were filed against the applicant and other co-accused and most of them are pending for trial. However, it has been pointed out by Mr.Pradhan that in the case arising from LAC No.38 of 1999 the applicant has already been acquitted and same is the case arising from C.R. No.88 of 1999 as per the acquittal order dated 21/1/2006. It is further pointed out that in the criminal case arising from C.R.No. 150/04 the applicant has been discharged by the Special Court as per the order dated 11/12/2006. Out of the remaining two cases it has been pointed out by the learned counsel for the applicant that in the cases arising from C.R. No.146/02 and C.R.No.142/05 the trial is pending and in both the cases the applicant has been released on bail. Mr.Gadkari pointed out that the applicant was absconding and he

was deported from Dubai and came to be arrested on 20/7/2004. It is also stated that even while the applicant has been in jail from 20/7/2004, the crimes are being reported and registered against him and, therefore, his involvement in committing organised crimes even though he is behind the bars is strongly apprehended and this is one of the grounds on which the bail application has been opposed.

5. On the other hand, Mr. Pradhan has placed reliance on the following two orders passed by this court:-

(a) Nazim Hasan Shamsh Zoha Rizvi vs. The State of Maharashtra [Criminal Application No. 5181 of 2003 in Criminal Appeal No. 1343 of 2003].

(b) Uday Mohanlal Acharya vs. The State of Maharashtra [Criminal Application No. 4297 of 2005 in Criminal Appeal No. 389 of 2002].

4. It has further been pointed out that the order

passed by this court in Uday Mohanlal Acharya's case has been confirmed by the Supreme Court in SLP (Cri) No. 5455 of 2005 on 14/11/2005. As at present, the appeals filed upto the years 2001, in which the appellants are in jail, have been listed for final hearing and, therefore, Criminal Appeal No. 639 of 2007 filed by the present applicant is not likely to be listed at least for another year or so for final hearing and more so when the appeals from Special Cases like NDPS and MCOC etc. of earlier years are still pending for final hearing and the appellants are in jail in most of these cases. Paper book also is not ready in the appeal and I am told that the depositions run into more than 3000 pages.

5. Having regards to the law laid down by the Supreme Court in the case of Bhagwan Rama Shinde Gosai and ors. vs. State of Gujarat [(1999) 4 SCC 421] and Shailendra Kumar vs. State of Delhi [(2000) 4 SCC 178] as well as the orders passed by this court in the above referred two cases, the application is required to be allowed but with certain strict conditions so as to ensure that the applicant does not leave the

country and is not involved in any fresh offences during the pendency of the appeal.

6. Hence, it is directed that the applicant be released on bail in the sum of Rs.1,00,000/- and with two solvent sureties of the like amount and both of them shall be the permanent residents of Mumbai. In addition, the applicant shall every day, during the pendency of Criminal Appeal No. 639 of 2007, report to the M.R.A. Marg Police Station, Mumbai, between 3 p.m. to 7 p.m. and he shall not leave Mumbai without obtaining written permission in advance from the Senior Police Inspector of the said police station at any time during the pendency of this appeal. In case the applicant has obtained a passport, as at present, he shall surrender the same to the Sr.PI of M.R.A. Marg Police Station. The applicant shall not apply for new passport during the pendency of the appeal.

7. Application is disposed off in terms of the above directions.

(B.H. Marlapalle,J.)